



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

August 19, 2010

C-14J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Schultz
Shultz & Schultz LLP
640 Cepi Drive, Suite A
Chesterfield, IL 63005-1221

Re: Former Rogers Cartage Operation on Conoco Phillips Property off of Cargill Road in
Cahokia, IL

Dear Mr. Schultz:

This letter is a supplementary response to your letter of December 8, 2009, in which you set forth on behalf of your client the reasons for its belief that it is not legally liable for the contamination caused by the former Rogers Cartage (Rogers) chemical transport and storage operation referenced above (Cahokia Facility or Site). You had sent that letter in response to the general notice letter EPA sent to your client and to Conoco Phillips regarding the Cahokia facility.

The Region's initial response to your letter was directed at reaching an agreement on the administrative order on consent (AOC) that was sent as part of the general notice package. That AOC set forth actions required to address PCB contamination at the Site. However, since that time it has become clear that your client is not interested in signing an AOC. This letter sets forth the Region's response to your letter and provides an explanation of basis for further action under CERCLA with respect to your client as regards this Site.

Review of the file in this matter reveals that your client exclusively operated, under a lease agreement with Conoco Phillips, a 5-acre facility for chemical transport and storage from approximately 1950 until 1970. Review of the transcripts in the Sauget Area One litigation reveals that Monsanto was among the customers Rogers, by its own admission, used during that timeframe. Among the chemicals Rogers hauled for Monsanto was zinc, diphenol phosphates, oleums, chlorobenzene, sulfuric acid and PCBs: all chemicals that are or contain hazardous substances. Rogers ran a truck washing operation at the Cahokia facility, which eyewitness testimony stated generated waste water contaminated with residual product hauled in the trucks. It was not disputed that Rogers stored this wastewater in lagoons at the Site, and it is also not in

dispute that the highest levels of PCB contamination at the Site are found at the former locations of these lagoons. No other party ever used or occupied this former Rogers' facility again. Clearly, Rogers' operations at the Cahokia facility led to the release of hazardous substances now targeted in this CERCLA action.

Your letter raises several objections to being labeled a PRP for the Site. First, you raise res judicata and collateral estoppel concerns. These defenses do not apply because this matter only involves the former Rogers facility on Conoco Phillips property: the ruling in the Sauget Area One litigation applied only to costs expended on the Sauget Area One site. The Area targeted for cleanup in this matter is not part of Sauget Area One. Second, you state that the PCB spilled on the property was "product" and not waste, resulting in the claim being "barred." Superfund does not exclude product from being hazardous substance; a product that is a hazardous substance is actionable under Superfund once it is released, as has occurred in this case. Likewise, under RCRA, the PCBs and other products hauled by Rogers became wastes once they were discarded in the course of the truck washing operation. Third, you assert that the CERCLA statute of limitations bars any claim against Rogers Cartage. The CERCLA statute of limitations, 42 U.S.C. § 9613(g), does not apply to claims for injunctive relief under Section 106 of CERCLA, that which is being asserted by EPA here. Forth, as indicated in the enclosed letter from IEPA, prior to issuance of EPA's general notice, the Site was separated out of the Illinois voluntary clean-up program (assuming without accepting that failure to do this would bar a claim under CERCLA). Finally, your letter states that other local businesses should be included as PRPs in this matter. The liability of other PRPs at this Site, if any, does not preclude Rogers' liability as the operator of the Site. If Rogers chooses, it can provide information supporting inclusion of other PRPs in this matter. As you know, owner Conoco Phillips has already been noticed of its liability in this case.

This letter confirms notification to Rogers Cartage (and Tankstar, as Rogers Cartage's parent) of its liability in this matter under CERCLA, that it may incur or may have incurred, with respect to the above referenced Site. Under Section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and § 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 (RCRA), and other laws, responsible parties are obligated to implement response actions deemed necessary by EPA to protect health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. In addition, PRPs may be liable for damages to natural resources. EPA may issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$32,500 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3).

Further action to address the PCB contamination at the Site is forthcoming. The on-scene coordinator, Kevin Turner, and I are available to talk with you and your client further about this matter. I request that you contact me immediately if your client is willing to take part in a discussion about future efforts to clean up the site. As usual, I can be contacted at 312-886-4273.

Sincerely yours,

A handwritten signature in black ink, appearing to read "TJ Martin", written in a cursive style.

Thomas J. Martin
Associate Regional Counsel

Enclosure

cc: James F. Thompson
Lathrop & Gage LLP
2345 Grand Blvd., Suite 2200
Kansas City, MO 64108-2618

Paul Lake (IEPA)

bcc: Thomas Martin, ORC (C-14J)
Kevin Turner (SE-5J)
Stephanie Linebaugh (SR-6J)

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
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ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

(217) 782-6761

rec'd
10/24/05
ESP

October 19, 2005

CERTIFIED MAIL7004 2510 0001 8650 1729

Eric Petersen

Risk Management and Remediation, Site Manager

ConocoPhillips Pipeline Company

900 South Central Avenue, Main Office Room 357

Roxana, Illinois 62084

Re: 1630205002 -- St. Clair County
Cahokia/Phillips Pipe Line Company
Site Remediation/Technical Reports

Dear Mr. Petersen:

The Illinois Environmental Protection Agency (Illinois EPA) acknowledges the receipt of the September 30, 2005 Revised Site Remediation Program Application (SRP) and Services Agreement (DRM-1) Form. The Illinois EPA further acknowledges that the Revised DRM-1 Form was submitted to formalize the removal of the former Roger's Cartage 2.73-acre parcel from the larger 360-acre Phillips Pipe Line Company Site entered in the SRP. The Illinois EPA received the Revised DRM-1 form on October 5, 2005 (Log No. 05/26698).

Please provide the Illinois EPA with an original and one (1) copy of any future information submitted regarding the above referenced site. The Illinois EPA also requests not less than fourteen (14) days notification of all site investigation and remedial activities to coordinate oversight. This notification is particularly important when groundwater and soil samples will be collected. Please feel free to contact me at (217) 782-9079 or the above address, if you have any questions or comments regarding this letter.

Sincerely,

Marc Cummings, Project Manager
Voluntary Site Remediation Unit
Remedial Project Management Section
Division of Remediation Management
Bureau of Land

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

a:\PPL (Conoco) 09-30-05 PCB Parcel Removed from SRP 10-19-05 acknow ltr.doc

cc: Patrick L. King, L.P.G.
Senior Project Manager
ATC Associates, Inc.
8233 Brentwood Industrial Drive
St. Louis, Missouri 63144